

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Colin Lodewick	Team: Squad #08	CCRB Case #: 202303619	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 04/17/2023 5:48 PM, Friday, 04/21/2023 4:37 PM	Location of Incident: Opposite of 800 East 180th Street 48th Precinct stationhouse	18 Mo. SOL 10/17/2024	Precinct: 48		
Date/Time CV Reported Mon, 04/17/2023 7:48 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 04/25/2023 1:19 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. PO Frank Giordano	27714	969092	045 PCT
3. an officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Karen Rojas	04274	955407	048 PCT
2. PO Ivan Nunez	25299	975055	045 PCT
3. PO Raul Rodriguez	20448	973728	040 PCT
4. PO Paola Ruizholguin	25903	971213	040 PCT
5. PO Ercilio Luna	06041	949233	048 PCT
6. PO Amin Fontana	21446	941773	048 PCT
7. LT Brian Klarman	00000	946506	048 PCT
8. PO Alex Claudio	22252	945593	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A . PO Frank Giordano	Abuse: On April 17, 2023, Police Officer Frank Giordano damaged § 87(2)(b) property.	
B . PO Frank Giordano	Discourtesy: On April 17, 2023, Police Officer Frank Giordano spoke discourteously to § 87(2)(b)	
C . PO Frank Giordano	Abuse: On April 17, 2023, Police Officer Frank Giordano threatened to arrest § 87(2)(b)	
D . Officers	Abuse: On April 17, 2023, officers refused to provide their names to § 87(2)(b)	
E . Officers	Abuse: On April 17, 2023, officers refused to provide their shield numbers to § 87(2)(b)	
F . an officer	Abuse: On April 21, 2023, an officer did not process § 87(2)(b) complaint regarding an officer.	

Case Summary

On April 26, 2023, the CCRB received this case from IAB, where § 87(2)(b) originally reported it on April 17, 2023.

On April 17, 2023, at approximately 5:48 PM, § 87(2)(b) was standing at the intersection of E 180th Street and Mapes Avenue in the Bronx when a marked police SUV allegedly struck his vehicle that was parked across the street while chasing another vehicle (**Allegation A: Abuse of Authority**, § 87(2)(g)). Police Officer Frank Giordano of the 45th Precinct exited the driver's seat of the vehicle that allegedly struck § 87(2)(b) vehicle. § 87(2)(b) asked the officers present if they were going to take responsibility for the damage to his vehicle. PO Giordano told § 87(2)(b) "Stop causing shit," and "Stand on the sidewalk before you get your ass arrested" (**Allegation B: Discourtesy**, § 87(2)(g)) and **Allegation C: Abuse of Authority**, § 87(2)(g). § 87(2)(b) then asked the officers present for their names and shield numbers. The officers allegedly did not provide their names and shield numbers to § 87(2)(b) (**Allegations D and E: Abuse of Authority**, § 87(2)(g)). Sergeant Karen Rojas of the 48th Precinct arrived on the scene and took down a report regarding § 87(2)(b) vehicle.

On April 21, 2023, § 87(2)(b) went to the 48th Precinct stationhouse at approximately 4:37 PM to retrieve the report. After reviewing it, § 87(2)(b) asked an officer for help filing a complaint against the officers involved in the incident on April 17. The officer allegedly told § 87(2)(b) that he could not file a complaint at the stationhouse and that he needed to call IAB or file the complaint online (**Allegation F: Abuse of Authority**, § 87(2)(g)).

§ 87(2)(b) was not summonsed or arrested as a result of this incident.

The investigation obtained body-worn camera footage relevant to this incident. The footage is linked in IA #47 and summarized in IA #59 (**Board Review 03, 04**). The investigation also obtained personal cellphone footage from § 87(2)(b). The footage is linked in IA #86 and summarized in IA #87 (**Board Review 07, 08**). The investigation further obtained surveillance footage from the 48th Precinct stationhouse that pertains to this incident. The footage is linked in IA #134 and summarized in IA #71 (**Board Review 13, 14**).

Findings and Recommendations

Allegation (A) Abuse of Authority: On April 17, 2023, Police Officer Frank Giordano damaged § 87(2)(b) property.

On May 2, 2023, § 87(2)(b) testified to the CCRB that at approximately 5:48 PM on April 17, 2023, he exited an apartment building located at § 87(2)(b) in the Bronx and stood on the southeast corner of the intersection of E 180th Street and Mapes Avenue (**Board Review 01**). His vehicle, a 2017 black convertible Chevrolet Camaro, was parked across the street near the northeast corner of the intersection in front of a medical and dental center located at 817 E 180th Street. As he was standing, two marked police SUVs drove westbound on E 180th Street past him in pursuit of a black four-door sedan at approximately 40 to 45 miles per hour. One police SUV drove beside the black sedan on its left side and one police SUV drove behind it. § 87(2)(b) believed that the officers operating the police vehicles were attempting to intentionally hit the black vehicle to make it "spin off." In doing so, one of the two police vehicles rebounded off the black vehicle and side swiped § 87(2)(b) parked vehicle, damaging it. The black vehicle collided with another vehicle and stopped near the southwest corner of the intersection of E 180th Street and Mapes Avenue in the oncoming traffic lane.

On June 12, 2023, PO Giordano testified to the CCRB that on April 17, 2023, at approximately 5:00 PM, he was taking lunch in his police vehicle (#4933) with his partner Police Officer Ivan Nunez near the intersection of E 180th Street and Mapes Avenue when an individual approached them to state that someone had just gotten into a car accident nearby (**Board Review 02**). PO Giordano and PO Nunez looked up and saw that someone had crashed into a parked car. PO Giordano pulled out of the spot where he was parked and drove approximately half a block to the scene, where he parked in a driving lane and partially blocked traffic. PO Giordano denied hitting § 87(2)(b) vehicle while driving to the scene. PO Giordano denied that any officer hit § 87(2)(b) vehicle or that any officer was involved in a vehicle chase during the incident.

PO Giordano's BWC footage captures a limited view of the beginning of the incident (**Board Review 03**). The footage begins with PO Giordano sitting in the driver's seat of his parked police vehicle. PO Giordano begins to drive at the 00m39s timestamp. PO Giordano parks at the 00m51s timestamp and exits the vehicle at the southwest corner of the intersection of E 180th Street and Mapes Avenue in the Bronx to approach a driver who collided with a parked vehicle. The footage does not show any officer engaging in a vehicle chase.

A Google Maps search for the northeast corner of the intersection of E 180th Street and Mapes Avenue in the Bronx shows the same apartment building visible through the front windshield of PO Giordano's police vehicle at the beginning of his BWC footage (**Board Review 05, 06**).

§ 87(2)(b) specifically identifies PO Giordano's police vehicle (#4933) as the one that struck his vehicle in a personal cellphone video that he recorded on the scene (**Board Review 07**).

The investigation was not able to identify or obtain any documentation for a police vehicle having crashed into another vehicle during the incident.

§ 87(2)(b) and PO Giordano's testimonies are not consistent regarding PO Giordano engaging in a high-speed chase and damaging § 87(2)(b) parked vehicle with his police vehicle. As PO Giordano's BWC footage establishes that at the beginning of the incident he was parked at the northeast corner of E 180th Street and Mapes Avenue in the Bronx, where § 87(2)(b) vehicle was also parked, and that he only drove for approximately 12 seconds before coming to a full stop approximately one block away to address an individual who crashed a car, § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (B) Discourtesy: On April 17, 2023, Police Officer Frank Giordano spoke discourteously to § 87(2)(b)

Allegation (C) Abuse of Authority: On April 17, 2023, Police Officer Frank Giordano threatened to arrest § 87(2)(b)

It is undisputed that PO Giordano used profanity toward § 87(2)(b) during the incident and threatened to arrest him.

PO Giordano testified to the CCRB that while he was on the scene responding to the individual who crashed his vehicle, § 87(2)(b) walked into the middle of the street and stated: "You hit my car" (**Board Review 02**). PO Giordano told § 87(2)(b) to get out of the street or else he could be arrested. PO Giordano determined that § 87(2)(b) by trying to attract the officers' attention, was interfering with the ongoing investigation into the man who crashed the vehicle. § 87(2)(b) could

have been arrested for obstructing governmental administration (OGA), disorderly conduct, and impeding traffic by standing in the middle of the road. § 87(2)(b) walked over to the sidewalk and stood between parked cars. § 87(2)(b) walked back into the street after several minutes. PO Giordano commanded § 87(2)(b) “Get your ass on the sidewalk.” PO Giordano used the word “ass” when speaking with § 87(2)(b) because § 87(2)(b) did not obey his first command to go to the sidewalk and because he wanted to speak more authoritatively. During his CCRB interview, PO Giordano was shown a portion of his BWC footage that captures him telling § 87(2)(b) to “stop causing shit.” PO Giordano stated that he used the word “shit” because he needed to be more “authoritative” when speaking with § 87(2)(b).

PO Giordano’s BWC footage captures his entire interaction with § 87(2)(b) on the scene (**Board Review 03**). PO Giordano tells § 87(2)(b) at the 19m48s timestamp: “Stop causing shit.” § 87(2)(b) then responds: “I’m not causing shit, you fucking hit my fucking car.” PO Giordano tells § 87(2)(b) “Stand on the sidewalk before you get your ass arrested” at the 20m10s timestamp of the recording.

NYPD Administrative Guide Procedure No. 304-06 prohibits uniformed members of service from engaging in conduct prejudicial to good order, efficiency, and discipline of the Department (**Board Review 09**).

NYPD Disciplinary Court Case No. 2015-15012 found that there are certain situations where profane remarks made during a stressful or chaotic situation would not constitute misconduct (**Board Review 10**).

NY CLS Penal § 195.05 establishes that a person is guilty of obstructing governmental administration (OGA) who obstructs, impairs, or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function by means of intimidation, physical force, interfering, or various other means (**Board Review 11**).

NY CLS Penal § 240.20 establishes that a person can be guilty of disorderly conduct by engaging in a variety of behaviors with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof (**Board Review 12**).

It is undisputed that PO Giordano used profanity while speaking with § 87(2)(b) during the incident § 87(2)(g). While PO Giordano testified that he used profanity, specifically the word “shit” and “ass,” in order to take a more authoritative tone with § 87(2)(b) § 87(2)(g).

It is undisputed that PO Giordano threatened to arrest § 87(2)(b) on April 17, 2023. While PO Giordano testified to the CCRB that he could have arrested § 87(2)(b) during the incident, § 87(2)(g). When § 87(2)(b) first approached officers on the street while they were handling the individual involved in the collision and accused them of damaging his vehicle, he stood approximately the width of one car lane from them, as shown in PO Giordano’s BWC footage, and did not interfere in the officers’ activities. Further, § 87(2)(b) initially complied with PO Giordano’s command to go to the sidewalk but turned back around to address officers only when PO Giordano told him to “stop causing shit,” escalating the encounter. All the while, § 87(2)(b)

did not threaten officers, make unreasonable noise, meaningfully obstruct traffic, or exhibit any other behavior that might constitute disorderly conduct. § 87(2)(g)

Allegation (D) Abuse of Authority: On April 17, 2023, officers refused to provide their names to § 87(2)(b)

Allegation (E) Abuse of Authority: On April 17, 2023, officers refused to provide their shield numbers to § 87(2)(b)

§ 87(2)(b) testified to the CCRB that after he first engaged with PO Giordano, he attempted to show the officers that there was damage to the police vehicle that hit his vehicle (**Board Review 01**). § 87(2)(b) then asked all the officers present for their names and shield numbers multiple times. § 87(2)(b) did not direct his request at any specific officer, but rather asked the group.

PO Giordano testified to the CCRB that he did not hear § 87(2)(b) ask for any officer's name or shield number during the incident (**Board Review 02**).

As PO Giordano was the primary officer to engage with § 87(2)(b) the investigation deemed it unnecessary to interview additional officers regarding this portion of the complaint.

§ 87(2)(b) relevant personal cellphone footage captures him asking all the officers on the scene for their names and shield numbers at the 00m14s timestamp of the recording while he stands across the street from the incident (**Board Review 07**). No officer is heard responding to § 87(2)(b). During the video, multiple vehicles drive between § 87(2)(b) and officers.

PO Giordano's BWC footage captures the same portion of the incident that § 87(2)(b) personal cellphone footage captures (**Board Review 03**). At the 20m38s timestamp of the recording, § 87(2)(b) is visible standing across the street when he asks for officers' names and shield numbers. A vehicle drives between § 87(2)(b) and the officers on the scene when § 87(2)(b) makes his request. PO Giordano is speaking with EMS personnel while § 87(2)(b) makes his request. No officer responds to § 87(2)(b) request.

It is undisputed that § 87(2)(b) stated during the incident that he wanted officers' names and shield numbers. While PO Giordano's BWC footage, along with BWC footage of other officers present, captures the moment § 87(2)(b) asked for names and shield numbers, the investigation was unable to determine by a preponderance of evidence that officers heard the request given the distance § 87(2)(b) stood from officers, the traffic conditions at the time of the incident, and the fact that they were engaged in an ongoing investigation, and then refused to provide their names and shield numbers. § 87(2)(g)

Allegation (F) Abuse of Authority: On April 21, 2023, an officer did not process § 87(2)(b) complaint regarding an officer.

§ 87(2)(b) testified to the CCRB that he went to the 48th Precinct stationhouse on April 21, 2023, at approximately 5:30 PM to retrieve a report regarding his damaged vehicle (**Board Review 01**). § 87(2)(b) spoke with an officer whom he described as a Hispanic or Dominican male wearing a regular police uniform, who may have been a sergeant. § 87(2)(b) told the officer that he wished to file a complaint against Sgt. Rojas for taking down his report incorrectly. The officer gave § 87(2)(b) the number for the Internal Affairs Bureau and informed him that he could not file a complaint at the stationhouse.

Stationhouse footage captures the entirety of § 87(2)(b) activity at the 48th Precinct stationhouse on April 21, 2023 (**Board Review 13**). At the 41m00s timestamp, § 87(2)(b) enters the civilian waiting area behind Police Officer Amin Fontana. PO Fontana retrieves papers for § 87(2)(b) presenting them to him at the 46m20s timestamp of the recording. § 87(2)(b) then exits the waiting area to go outside, but turns around and returns to the desk, where he interacts with Lieutenant Brian Klarman at the 47m50s timestamp. The two have a brief discussion before Lt. Klarman exits the frame. Police Officer Alex Claudio then approaches § 87(2)(b) at the front desk at the 51m45s timestamp of the recording.

PO Fontana and PO Claudio's pedigree information both match § 87(2)(b) description of the officer at the 48th Precinct stationhouse who allegedly told him that he could not file a complaint at the stationhouse (**Board Review 15, 16**). Both are Hispanic male officers of the approximate same height, build, and complexion. Both PO Fontana and PO Claudio are bald and were wearing similar uniforms on the day of the incident.

PO Fontana testified to the CCRB on July 13, 2023, that on April 21, 2023, he was working as stationhouse security at the 48th Precinct stationhouse when § 87(2)(b) approached the front door (**Board Review 17**). § 87(2)(b) told PO Fontana that he wanted a copy of a Police Accident Report. PO Fontana escorted § 87(2)(b) into the stationhouse, and after taking § 87(2)(b) ID, accessed the Motor Vehicle Accident Report that had been prepared regarding § 87(2)(b) incident. PO Fontana returned to his post outside of the stationhouse after giving § 87(2)(b) the report. § 87(2)(b) then approached PO Fontana and said: "This is bullshit," apparently angered because of the report. § 87(2)(b) stated that he was going to make a complaint. § 87(2)(b) did not ask PO Fontana to prepare a complaint for him. § 87(2)(b) walked back into the stationhouse.

PO Claudio testified to the CCRB on July 31, 2023, that he did not remember any incident that occurred between him and § 87(2)(b) at the 48th Precinct stationhouse on April 21, 2023 (**Board Review 18**). During his CCRB interview, PO Claudio was presented with stationhouse footage from the incident date showing him interact with § 87(2)(b). PO Claudio identified himself in the footage, but the footage still did not refresh his recollection regarding any interaction he had with § 87(2)(b). PO Claudio did not remember § 87(2)(b) ever asking him to file a civilian complaint at the stationhouse.

§ 87(2)(b) testimony is not consistent with testimonies of either PO Fontana or PO Claudio, both of whom could be the officer § 87(2)(b) identified during his CCRB statement due to their very similar pedigree information. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)

- § 87(2)(b) [REDACTED]
- PO Giordano has been a member of service for three years and has been a subject in one additional CCRB complaints and one allegation that was not substantiated (**Board Review 20**).
§ 87(2)(g) [REDACTED]

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of June 5, 2023, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (**Board Review 21**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RPBP History

- This complaint did not contain any allegations of Racial Profiling/Bias-Based Policing.

Squad: 8 _____

Investigator:	<u>Colin Lodewick</u> Signature	<u>Inv. Colin Lodewick</u> Print Title & Name	<u>09/11/2023</u> Date
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Squad Leader:	<u>Ethan De Angelo</u> Signature	<u>IM Ethan De Angelo</u> Print Title & Name	<u>09/11/2023</u> Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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